



February 16, 2007

HOUSE BILL No. 1437

DIGEST OF HB 1437 (Updated February 13, 2007 11:55 am - DI 107)

Citations Affected: IC 11-12.

Synopsis: Forensic diversion. Imposes additional requirements for a person to participate in a pre-conviction or post-conviction forensic diversion program. Provides that a person who has both a mental illness and an addictive disorder may participate in a forensic diversion program. (Current law allows a person who has a mental illness or an addictive disorder to participate.) (The introduced version of this bill was prepared by the forensic diversion study committee.)

Effective: July 1, 2007.

Foley, Smith V

January 16, 2007, read first time and referred to Committee on Judiciary.
February 15, 2007, reported — Do Pass.

C
o
p
y

HB 1437—LS 6069/DI 107+



February 16, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

C
o
p
y

HOUSE BILL No. 1437

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-12-3.7-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. As used in this
3 chapter, "forensic diversion program" means a program designed to
4 provide an adult:

5 (1) who has a mental illness, ~~or an~~ **addictive disorder, or both a**
6 **mental illness and an addictive disorder;** and
7 (2) who has been charged with a crime that is not a violent
8 offense;
9 an opportunity to receive community treatment and other services
10 addressing mental health and addiction instead of or in addition to
11 incarceration.

12 SECTION 2. IC 11-12-3.7-7 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) An advisory
14 board shall develop a forensic diversion plan to provide an adult who:

15 (1) has a mental illness, ~~or an~~ **addictive disorder, or both a**
16 **mental illness and an addictive disorder;** and
17 (2) has been charged with a crime that is not a violent crime;

HB 1437—LS 6069/DI 107+



an opportunity, pre-conviction or post-conviction, to receive community treatment and other services addressing mental health and addictions instead of or in addition to incarceration.

(b) The forensic diversion plan may include any combination of the following program components:

- (1) Pre-conviction diversion for adults with mental illness.
- (2) Pre-conviction diversion for adults with addictive disorders.
- (3) Post-conviction diversion for adults with mental illness.
- (4) Post-conviction diversion for adults with addictive disorders.

(c) In developing a plan, the advisory board must consider the ability of existing programs and resources within the community, including:

- (1) a drug court established under IC 12-23-14.5;
- (2) a court alcohol and drug program certified under IC 12-23-14-13;
- (3) treatment providers certified by the division of mental health and addiction under IC 12-23-1-6 or IC 12-21-2-3(a)(5); and
- (4) other public and private agencies.

(d) Development of a forensic diversion program plan under this chapter or IC 11-12-2-3 does not require implementation of a forensic diversion program.

(e) The advisory board may:

- (1) operate the program;
- (2) contract with existing public or private agencies to operate one (1) or more components of the program; or
- (3) take any combination of actions under subdivisions (1) or (2).

(f) Any treatment services provided under the forensic diversion program:

- (1) for addictions must be provided by an entity that is certified by the division of mental health and addiction under IC 12-23-1-6; or
- (2) for mental health must be provided by an entity that is:
 - (A) certified by the division of mental health and addiction under IC 12-21-2-3(a)(5);
 - (B) accredited by an accrediting body approved by the division of mental health and addiction; or
 - (C) licensed to provide mental health services under IC 25.

SECTION 3. IC 11-12-3.7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) A person is eligible to participate in a pre-conviction forensic diversion program only if the person meets the following criteria:

- (1) The person has a mental illness, ~~or~~ an addictive disorder, **or**

C
o
p
y



both a mental illness and an addictive disorder.

(2) The person has been charged with an offense that is:

(A) not a violent offense; and

(B) a Class A, B, or C misdemeanor, or a Class D felony that may be reduced to a Class A misdemeanor in accordance with IC 35-50-2-7.

(3) The person does not have a conviction for a violent offense in the previous ten (10) years.

(4) The court has determined that the person is an appropriate candidate to participate in a pre-conviction forensic diversion program.

(5) The person has been accepted into a pre-conviction forensic diversion program.

(b) Before an eligible person is permitted to participate in a pre-conviction forensic diversion program, the court shall advise the person of the following:

(1) Before the individual is permitted to participate in the program, the individual will be required to enter a guilty plea to the offense with which the individual has been charged.

(2) The court will stay entry of the judgment of conviction during the time in which the individual is successfully participating in the program. If the individual stops successfully participating in the program, or does not successfully complete the program, the court will lift its stay, enter a judgment of conviction, and sentence the individual accordingly.

(3) If the individual participates in the program, the individual may be required to remain in the program for a period not to exceed three (3) years.

(4) During treatment the individual may be confined in an institution, be released for treatment in the community, receive supervised aftercare in the community, or may be required to receive a combination of these alternatives.

(5) If the individual successfully completes the forensic diversion program, the court will waive entry of the judgment of conviction and dismiss the charges.

(6) The court shall determine, after considering a report from the forensic diversion program, whether the individual is successfully participating in or has successfully completed the program.

(c) Before an eligible person may participate in a pre-conviction forensic diversion program, the person must plead guilty to the offense with which the person is charged.

(d) Before an eligible person may be admitted to a facility under the

C
o
p
y



control of the division of mental health and addiction, the individual must be committed to the facility under IC 12-26.

(e) After the person has pleaded guilty, the court shall stay entry of judgment of conviction and place the person in the pre-conviction forensic diversion program for not more than:

(1) two (2) years, if the person has been charged with a misdemeanor; or

(2) three (3) years, if the person has been charged with a felony.

(f) If, after considering the report of the forensic diversion program, the court determines that the person has:

(1) failed to successfully participate in the forensic diversion program, or failed to successfully complete the program, the court shall lift its stay, enter judgment of conviction, and sentence the person accordingly; or

(2) successfully completed the forensic diversion program, the court shall waive entry of the judgment of conviction and dismiss the charges.

SECTION 4. IC 11-12-3.7-12, AS AMENDED BY P.L.39-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) A person is eligible to participate in a post-conviction forensic diversion program only if the person meets the following criteria:

(1) The person has a mental illness, ~~or~~ an addictive disorder, **or both a mental illness and an addictive disorder.**

(2) The person has been convicted of an offense that is:

(A) not a violent offense; and

(B) not a drug dealing offense.

(3) The person does not have a conviction for a violent offense in the previous ten (10) years.

(4) The court has determined that the person is an appropriate candidate to participate in a post-conviction forensic diversion program.

(5) The person has been accepted into a post-conviction forensic diversion program.

(b) If the person **meets the eligibility criteria described in subsection (a) and** has been convicted of an offense that may be suspended, the court ~~shall~~ **may**:

(1) suspend all or a portion of the person's sentence;

(2) place the person on probation for the suspended portion of the person's sentence; and

(3) require as a condition of probation that the person successfully participate in and successfully complete the post-conviction

C
o
p
y



forensic diversion program.

(c) If the person **meets the eligibility criteria described in subsection (a) and** has been convicted of an offense that is nonsuspendible, the court ~~shall~~ **may**:

(1) order the execution of the nonsuspendible sentence; and

(2) stay execution of all or part of the nonsuspendible portion of the sentence pending the person's successful participation in and successful completion of the post-conviction forensic diversion program.

The court shall treat the suspendible portion of a nonsuspendible sentence in accordance with subsection (b).

(d) The person may be required to participate in the post-conviction forensic diversion program for no more than:

(1) two (2) years, if the person has been charged with a misdemeanor; or

(2) three (3) years, if the person has been charged with a felony.

The time periods described in this section only limit the amount of time a person may spend in the forensic diversion program and do not limit the amount of time a person may be placed on probation.

(e) If, after considering the report of the forensic diversion program, the court determines that a person convicted of an offense that may be suspended has failed to successfully participate in the forensic diversion program, or has failed to successfully complete the program, the court may do any of the following:

(1) Revoke the person's probation.

(2) Order all or a portion of the person's suspended sentence to be executed.

(3) Modify the person's sentence.

(4) Order the person to serve all or a portion of the person's suspended sentence in:

(A) a work release program established by the department under IC 11-10-8 or IC 11-10-10; or

(B) a county work release program under IC 11-12-5.

(f) If, after considering the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense failed to successfully participate in the forensic diversion, or failed to successfully complete the program, the court may do any of the following:

(1) Lift its stay of execution of the nonsuspendible portion of the sentence and remand the person to the department.

(2) Order the person to serve all or a portion of the nonsuspendible portion of the sentence that is stayed in:

C
O
P
Y



1 (A) a work release program established by the department
2 under IC 11-10-8 or IC 11-10-10; or

3 (B) a county work release program under IC 11-12-5.

4 (3) Modify the person's sentence.

5 However, if the person failed to successfully participate in the forensic
6 diversion program, or failed to successfully complete the program
7 while serving the suspendible portion of a nonsuspendible sentence, the
8 court may treat the suspendible portion of the sentence in accordance
9 with subsection (e).

10 (g) If, after considering the report of the forensic diversion program,
11 the court determines that a person convicted of a nonsuspendible
12 offense has successfully completed the program, the court shall waive
13 execution of the nonsuspendible portion of the person's sentence.

**C
o
p
y**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1437, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LAWSON L, Chair

Committee Vote: yeas 10, nays 0.

**C
o
p
y**

